

A treaty Congress shouldn't ignore

BY JOHN B. BELLINGER III

About two years ago, while many Americans were watching President Obama's inauguration and my former colleagues in the Bush administration were cleaning out their offices, I was flying home from The Hague, where the International Court of Justice had just ruled against the United States in a case I had argued. The 15-judge court said that the United States had violated international law by allowing Texas to execute Jose Medellin, a Mexican national who had been convicted of the grisly rape and murder of two young girls, but who had not been given the Mexican Embassy at the time of his arrest. It ordered the United States to review the capital murder convictions of 50 other Mexicans.

Although many conservatives have criticized the World Court for intruding on American sovereignty, all Americans should want President Obama and the 112th Congress to comply with the court's decision, to help ensure that Americans arrested abroad are given access to State Department officials.

The court's 2009 ruling involved 51 Mexican nationals, all of whom had been convicted and sentenced to death for heinous crimes in this country. None of them had been told at the time of their arrests about their right to meet with a Mexican Embassy official, as required by the Vienna Convention on Consular Relations.

The Vienna Convention, one of the most important international agreements to which the United States is party, was unanimously approved by the Senate in 1969 on the recommendation of then-President Richard Nixon. The convention provides legal rules for countries to help their companies or citizens who travel to or conduct business in foreign countries. A key provision requires par-

ties to the treaty to promptly inform, upon arrest, nationals of other parties to the treaty that they have the right to meet with a consular official. Several thousand Americans are arrested in foreign countries every year, sometimes on trumped-up charges; this provision helps them alert their families, retain lawyers and receive help from the U.S. government.

In this instance, Mexico had brought a legal action before the International Court of Justice in 2003, claiming that the United States had violated the Vienna Convention. In 2004, the court ordered Washington to review the convictions of the 51 Mexicans to determine whether their lack of consular access had prejudiced their legal defenses. Under the U.N. Charter, which the Senate overwhelmingly approved in 1945, the United States is obligated to comply with the decisions of the World Court.

In 2005, to the surprise of liberals and conservatives, President George W. Bush directed state courts to review all of the Mexican convictions to comply with the U.N. Charter and ensure that Americans detained abroad receive reciprocal protections of the Vienna Convention.

The state of Texas challenged Bush's order, claiming that its former governor had exceeded his constitutional authority. In 2008, the U.S. Supreme Court agreed with Texas. In an opinion by Chief Justice John Roberts, while the court unanimously held that the United States has both an obligation under international law to comply with the World Court's decision and acknowledged a "plainly compelling" interest in ensuring reciprocal observance of the Vienna Convention, the court concluded that the U.S. Constitution does not give the president power to order state courts to review criminal convictions, even in an effort to comply with U.S. treaty obligations. Congress, the justices said, must give the president specific statutory authority to do so.

After the Supreme Court's decision, Texas promptly executed Jose Medellin, which led to the World Court decision in January 2009 that the United States had violated the World Court's previous order.

In contrast to the Bush administration, the Obama administration has made less visible efforts to comply with the World Court rulings. The White House has not asked Congress for legislation authorizing the president to order a review of the convictions of the remaining Mexican nationals, presumably because it is not popular to side with an international tribunal in favor of a group of convicted murderers. The next execution is scheduled for July.

Although Republicans might not be eager to cooperate with President Obama, legislators should craft a narrow law authorizing the president to comply with the World Court ruling. Even if they are skeptical of vague principles of international law, House Republicans should recognize that U.S. compliance with the Vienna Convention is vital. Members of Congress condemn other countries that fail to comply with their treaty obligations to the United States in cases of consular access and diplomatic immunity. But lawmakers cannot expect other countries to comply with their treaty obligations to us unless the United States observes its treaty obligations to them. Congress and the president must ensure that the United States observes the Vienna Convention not as a favor to foreigners but because it serves a "plainly compelling" national interest in protecting Americans who travel and American companies that operate in foreign countries.

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